



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 25, 1994

Ms. Ann Diamond  
Assistant District Attorney  
Tarrant County  
Office of the Criminal District Attorney  
Justice Center, 401 W. Belknap  
Fort Worth, Texas 76196-0201

OR94-388

Dear Ms. Diamond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25140.

The Tarrant County Sheriff's Department (the "department") received an open records request for certain witness statements that the department collected during the course of an internal affairs investigation into allegations that a detention officer had engaged in sexual conduct with inmates in the county jail. You state that you have released to the requestor a copy of his own statement; however, you seek to withhold two other statements pursuant to common-law privacy as incorporated into sections 552.101 and 552.102(a) of the Government Code. You specifically argue:

It should be noted that the Internal Affairs Division concluded that any allegations of sexual impropriety by the officer were 'not sustained.' However, allegations of a sexual nature are the type of thing where the mere allegation is harmful; exoneration can never undo the damage caused by public release of even a frivolous allegation.

Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection, however, is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such

that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The information at issue pertains primarily to the detention officer's alleged actions while acting as a public servant, and as such cannot be deemed to be outside the realm of public interest.<sup>1</sup> See *also* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

We have marked one portion of the requested information that appears to pertain solely to the personal life of one of the witnesses; the department must withhold this information pursuant to section 552.102. The remaining information contained in the two witness statements must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/RWP/rho

Ref.: ID# 25140

Enclosures: Marked documents

cc: Mr. Danny Jordan  
# 650231  
Route 4, Box 1100  
Roshman, Texas 77583-8817  
(w/o enclosures)

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<sup>1</sup>Although you do not specifically argue that the "not sustained" allegations implicate the officer's "false-light" privacy interests, we note that the Texas Supreme Court has recently held that the state of Texas does not recognize the tort of false-light invasion of privacy. See *Cain v. Hearst Corp.*, 1994 WL 278365 (Tex., June 22, 1994) (No. D-4171).